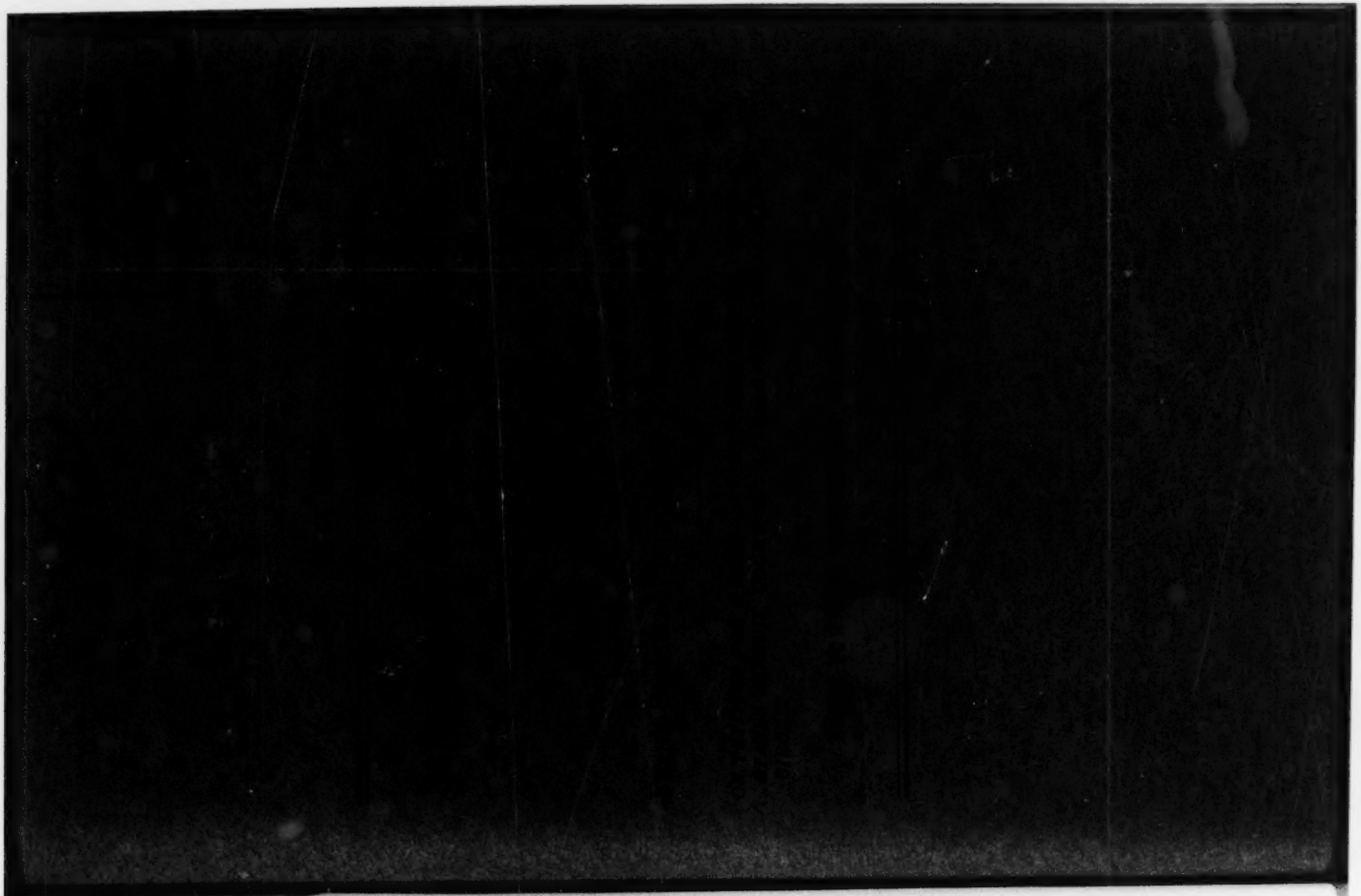

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312223—41

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 925

WRIGHT MORROW, PETITIONER

v.

FRANK SCOFIELD, COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court delivered no opinion. The opinion of the Circuit Court of Appeals is reported at 116 F. (2d) 17 (R. 59).

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 12, 1940 (R. 65). A petition for rehearing filed by the taxpayer on January 15, 1941, within the time extended by a Judge of the Circuit Court of Appeals (R. 66), was denied without opinion on February 1, 1941 (R. 74). The petition for a writ of certiorari was

filed on April 5, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an instrument transferring all right, title and interest in and to oil and gas leaseholds is subject to the documentary stamp tax provided for in Section 800, Schedule A–8, of Title VIII of the Revenue Act of 1926, as amended, which imposes a tax upon deeds or instruments in writing "whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed * * *."

STATUTES AND REGULATIONS INVOLVED

Pertinent statutes and regulations are set forth in the Appendix, *infra,* pp. 8–10.

STATEMENT

The facts were stipulated (R. 27–46) and found as stipulated (R. 47). They may be summarized as follows:

Petitioner, a resident of Houston, Texas, was the owner of certain oil and gas leases on lands located in Texas (R. 28). On July 31, 1935, he sold these leases to the Stanolind Oil & Gas Company for $19,717,500 (R. 28–29). The transfer of the leases was evidenced by a general conveyance (Ex. B–1, R. 31–33), which included prop-

erty other than the leases, and by a number of written assignments of which Exhibit A–2 (R. 17–18) is typical. The pertinent provision of the typical assignment reads as follows (R 17):

> That Wright Morrow, of Houston, Texas, for and in consideration of the sum of Ten ($10.00) Dollars and other valuable considerations, paid by Stanolind Oil and Gas Company, a Delaware corporation, the receipt of which is hereby acknowledged, does hereby sell, transfer, assign, set over, grant and convey unto said Stanolind Oil and Gas Company, its successors and assigns, all of the oil and gas lease acreage described in the schedule which is attached hereto, made a part hereof and marked for identification as Schedule "A" * * *.

The petitioner purchased revenue stamps from the respondent in the amount of $19,107.50 and attached them to the general conveyances to cover the tax, imposed by Section 800, Schedule A–8, of Title VIII of the Revenue Act of 1926, as amended, upon the sale of the Texas oil and gas leaseholds (R. 30). On February 18, 1936, petitioner filed a claim for refund for the purchase price of the stamps, plus interest (R. 30). Upon rejection of the claim by the Commissioner (R. 31), this action was brought in the District Court for refund of the taxes (R. 1). The trial court denied recovery (R. 47–48) and its decision was affirmed by the court below (R. 65).

ARGUMENT

1. Proceeding on the premise that the court below held that State law determines the applicability of the stamp tax to the instruments of transfer, petitioner asserts a conflict with *Burnet* v. *Harmel,* 287 U. S. 103, *Lyeth* v. *Hoey,* 305 U. S. 188, and *Morgan* v. *Commissioner,* 309 U. S. 78, as well as with *Weil* v. *United States,* 115 F. (2d) 999 (C. C. A. 2d) and *Niagara Hudson Power Corp.* v. *Hoey,* 117 F. (2d) 414 (C. C. A. 2d), both now pending on petitions for certiorari, Nos. 916 and 871, present Term. Petitioner's premise, however, is utterly without foundation. The court below, far from holding that state law controls the incidence of the tax, expressly rested its decision upon the proposition that instruments like those here involved do transfer interests in "lands, tenements, or other realty" within the meaning of the statute, regardless of whether, under local law, oil and gas leaseholds are held to be a conveyance of title to the real estate. The court stated (R. 61):

> * * * The Texas decisions aside, and they are uniform to the effect that mineral leasehold interests are interests in lands, tenements or other realty, we think the comprehensive language of the federal statute makes it quite plain that it was the intention of Congress to require the affixing of stamps to instruments of this kind, instruments which in substance convey interests in lands,

tenements or other realty without regard to the particular legal effects and consequences which may be attached to them by the laws of a particular state.

2. It is true, as petitioner points out, that Article 84 of Treasury Regulations 71 provides that "What constitutes 'lands, tenements, or other realty' is determinable by the law of the State in which the property is situated." The court below, although indicating its view that this regulation was not to be applied literally to the facts here presented, held that, whether so applied or not, the same result must be reached. The decision below was that, as a matter of statutory construction, and without regard to the classification given the transfer by Texas law, the stamp tax applies to an assignment of an oil and gas lease as an instrument whereby "lands, tenements, or other realty sold [are] granted, assigned, transferred or otherwise conveyed * * *." Precisely the same conclusion follows, as the court below pointed out, if Texas law is deemed determinative, for under Texas law it is plain that an assignment of a mineral lease is a conveyance of an interest in land. Consequently, irrespective of the weight given to the characterization of the transaction under state law, the stamp tax is applicable. See *Milwaukee Land Co.* v. *Poe,* 31 F. (2d) 733 (C. C. A. 9th).

3. The decision below is not contrary to the statement in *Burnet* v. *Harmel, supra,* to the effect that

oil and gas leases are not sales of the mineral content of the soil within the meaning of the capital gains provisions of the income tax laws. The *Harmel* case involved oil and gas leases made by the owner in fee of oil lands; the lands were retained by the lessor and the issue was simply whether the leases constituted sales of the oil and gas in place. Here, on the other hand, petitioner was a lessee, rather than a lessor, and assigned his leasehold interests to another. The question is not whether by virtue of the lease petitioner had purchased, and by virtue of the assignment of the lease had sold, the oil and gas in place, but whether the assignment of the leasehold interest constituted a sale of an interest in realty. On that question the record is conclusive. The assignments provided (R. 17), "That Wright Morrow * * * does hereby sell, transfer, assign", etc., and the parties stipulated (R. 28–29), that by the execution of the instruments of assignment, petitioner

> *sold*, transferred, assigned, set over, granted and conveyed to Stanolind Oil & Gas Company * * * all of his right, title and interest in and to the aforesaid oil and gas leaseholds covering lands located in the States of Texas and Louisiana. [Italics supplied.]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL, 1941.